Timeline

defendant's disposition, intention, or motive in the acts central to the current claim of damage. *Id.*" *Rhinehart v. Shelter Ins. Co.*, 261 S.W.3d 583, 590 (Mo. App. W.D. 2008).

Because Ameren itself says its corporate disposition or "state of mind" is at issue, this means other similar acts tending to reveal that state of mind are admissible. This has been the law of Missouri for over a century, beginning with *Manheimer v. Harrington,* 20 Mo. App. 297 (1886) and continuing to *Scott v. Blue Springs Ford, Inc.,* 215 S.W.3d 145, 180 (Mo. App. W.D. 2006). If there is a rational, logical nexus between the evidence and the issue of the defendant's disposition, attitude or course of conduct reflective of its mental state, proof of relevant conduct, to include post-accident conduct, is admissible on the issue of punitive damages. *Boshears v. Saint-Gobain Calmar, Inc.,* 272 S.W.3d 215 (Mo. App. W.D. 2008) (no error in allowing plaintiff to question corporate defendant if it had learned its lesson and to ask whether it would do the same thing over if it had the chance).

4. ANALYSIS OF EVIDENCE SUPPORTING SUBMISSION OF AGGRAVATING CIRCUMSTANCE DAMAGES

It is important to keep in mind the span of time this case involves. Ameren would have the court focus on the day of the explosion only. Ameren is wrong to limit the inquiry in that manner. Below is an overview of the broad sweep of time, events and actions in evidence that speak to Ameren's conscious indifference to the safety of others:

1979 - Regulator installed at 308 McNab (no records)[7] (likely no internal relief ("IRV") Model 1823B); no other form of overpressure protection; 55 psi inlet pressure[8]

- Ameren's corporate policy was that, once installed, regulators were allowed to stay in the field, in service, until they failed or malfunctioned[9]
- Regulators have safety function but were never directly or proactively replaced or maintained, while meters with billing, but no safety function are replaced and maintained[10]

[7] PSOF 71.
[8] PSOF 15
[9] PSOF 49, 50.

- Ameren had statutory duty to mount "rigid program of preventive maintenance" for its distribution system to include regulators[11]
- Ameren did nothing other than triennial leak surveys, which would only detect a leak problem outside if one was discovered on the day of the leak survey[12]
- Ameren's only form of overpressure protection for residential meter sets was to use regulators with IRV, thus if a regulator lacked IRV there was no overpressure protection on that customer's meter set
- Overpressure can result in leaks, fires and explosions[13]
- Non-IRV regulators which fail will foreseeably cause overpressure
- IRV is a backup safety device
- Ameren keeps no records of non-IRV regulators installed
- Ameren has a program for periodic testing, inspection, maintenance and replacement of gas meters but not regulators

1979-1984 – Ameren is actively installing non-IRV regulators in Missouri residential meter sets[14]

1984 - Ameren advises (in this litigation) that it ceased installation of non-IRV regulators this year[15]

1994 - MGUTC-Ameren regulator testing at request of Missouri PSC to establish customer line downstream pressure standards should regulator fail[16]

- Ameren Supervising Gas Engineer of Gas Operations William Luebbert was Chairman of the Subcommittee appointed by the Missouri Gas Utilities Technical Committee to investigate, test and analyze products to arrive at a recommended maximum safe value of downstream pressure in residential customer lines and appliances when a regulator fails
- Ameren submitted only IRV protected regulators to MGUTC for testing
- Only IRV protected regulators were tested
- Testing was actually only effective to determine if and the what extent the internal relief valve worked
- Ameren never informed Missouri PSC that it had previously installed an estimated 4,200 non-IRV regulators in Columbia, Missouri alone and 6,850 state wide in Missouri[17]
- If a regulator lacked IRV capability, testing simulating failure of regulator would have subjected lines and appliances to full line pressure of 55 psi

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[10] PSOF 51, 52 and 54.
[11] PSOF 18.
[12] PSOF Nos. 50, 79.
[13] PSOF 7.
[14] PSOF 26.
[15] PSOF 26.
[16] PSOF § V.B, 55-69.
[17] PSOF 67, 158.

- Testing resulted in report of MGUTC Subcommittee entitled: **"Determination of "Maximum Safe Value of Downstream Pressure Upon Failure of Gas Service/House Regulator MGUTC Subcommittee 1994-95"**[18]
- Industry literature to which Ameren subscribed and with which it agreed called for a maintenance program for service regulators but Ameren had none, ever.[19]

1995 - Missouri PSC establishes 2 psi maximum safe pressure downstream if IRV regulator fails; Ameren fails to inform PSC of pre-1984 non-IRV regulators in the field[20]

- This standard presupposed regulators with IRV
- Ameren allowed PSC to formulate and issue this standard without advising PSC that the testing resulting in the data and reports on which PSC relied involved only IRV protected regulators and Ameren had installed thousands of non-IRV regulators before 1984 pursuant to policy of allowing them to remain in service until failure, no record keeping and no plan ever to replace them in any systematic or organized manner[21]
- Ameren did nothing to enhance efforts to identify, maintain and replace non-IRV regulators despite its lead role in the testing that established safe pressure values for customer lines and appliances using only IRV protected regulators and despite fact that industry literature to which Ameren subscribed recommended maintenance program to ensure safety of regulators.[22]
- Ameren retained its policy of "let them fail in the field" for service regulators and had no plan to ever replace the Sneed's regulator[23]
- Ameren did nothing to ensure additional or different forms of overpressure protection for those residential customers lacking regulators with IRV protection
- Laclede and MGE participate in this testing, as does Ameren

1995-96 – Laclede and MGE (unlike Ameren) establish standards calling for proactive and specific removal of all "obsolete" non-IRV regulators[24]

2000 - Ameren OPM calling for inspection and change of "substandard" regulators if meter changed[25]

- Ameren had an unwritten "local policy" in Columbia to replace American Model 1823B and Fisher S104 regulators when encountered[26]
- This was allegedly due to the fact that these regulators had an under pressure shutoff feature which required company action in the event it was triggered
- Both of these regulators lacked IRV protection

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[18] PSOF 60.
[19] PSOF 45, 46.
[20] PSOF V.B., 55-69.
[21] PSOF 67, 68.
[22] PSOF 44-45.
[23] PSOF 73.
[24] PSOF § III, 18-22.
[25] PSOF 78, 89.
[26] PSOF 87-89.

- Ameren's "Field Reference Guide" and "Meter Header Inspection" Gas Policy required removal of "substandard" regulators but failed to mention the 1823B or S104 by name even though there were other "substandard" regulators included that did lack IRV protection

2002 - Ameren changes Sneed meter to enable automated meter reading, fails to change regulator[27]

- Ameren fails to remove and replace the regulator at the meter set when replacing the meter to retrofit it for automated meter reading capability
- Ameren's automated meter reading system was configured so as to make it impossible to trace flow distribution of gas over any given time interval because it overwrites the recorded data every 15 minutes with a new transmission
- 23 years since regulator at Sneed residence installed, no direct inspection or maintenance
- Cost of new regulator was approximately $25.00 (Twenty Two Dollars)
- No Ameren employee concluded the regulator at the Sneed residence was "substandard" and due for replacement even though it lacked IRV and even though the 1995 maximum safe level of downstream pressure standard was promulgated only with IRV protected regulators

2007 – Recall of 1,200 dangerous and defective Fisher HSR regulators deployed by Ameren on residential Missouri customer meter sets[28]

- "Product Recall Safety Alert" issued by Fisher Controls October 12, 2007 for Fisher HSR domestic gas service regulators made between March and June 2007[29]
- Fisher states these regulators represent the following risk:

Hazard: Gas can leak from regulator's flanges when flange screw heads break, posing a fire or explosion hazard to consumers.

- Ameren purchased 1200 of them
- Ameren was advised of the recall in 2007
- Ameren does not know how many were installed or where they were installed but knows that some were
- Ameren's policy of not keeping records of service regulator identity or installation location makes prevents Ameren from implementing the Fisher recall by removing the HSR regulators from service or by replacing the flange bolts
- Ameren has not advised the Missouri PSC of the Fisher HSR recall or the inability to implement it
- Ameren has not advised the U.S. Consumer Product Safety Commission of its inability to implement the Fisher HSR recall
- Ameren has not issued any mailing or communication to its customer base to advise them of the Fisher HSR recall

[27] PSOF 79.
[28] PSOF § IV.B., 28 – 38.
[29] PSOF § IV.B., 28 – 38.

2008 - Overpressure, leak and explosion at Sneed residence; spoliation of remnants of Sneed regulator sometime between March 14 and April 23

- Ameren's "let it stay in service until it fails" policy comes to fruition at 308 McNab, Columbia, Missouri
- For reasons better explained by plaintiffs' experts, high pressure intrusion of gas flowed into Sneed basement, causing leaks, explosion, fire, pain, suffering and death of Carl and Merna Sneed
- 1800 ft.^{3} of natural gas rushes through the regulator and meter causing over pressuring of pipes and fittings within the Sneed basement; this is an amount of gas 900% greater in 11 hours then the amount of gas recorded through the meter in the entire 24-hour period the day before
- Ameren's automated meter reading data system overwrites each transmission of data resulting in only a cumulative read which makes it impossible to determine the rate of flow or consumption of gas over the course of the morning of the explosion[30]
- Ameren's failure to maintain records of service regulator make, model, manufacturer and installation location prevents more conclusive ability to identify the regulator at the Sneed residence
- Subject regulator remnant with parts, linkages, components jutting from its center are clearly visible on several photographs taken the day of the explosion by Columbia Fire Department, Missouri PSC and Ameren expert Robert Miller[31]
- Ameren takes exclusive possession, custody and control of regulator remnant on day of explosion[32]
- On April 23, 2008, the regulator remnant is produced at the first joint inspection of the evidence is missing several key parts and components that were clearly visible and present on the day of the explosion[33]
- Ameren has no explanation for the whereabouts or disposition of the missing parts and components which could have, among other things, assisted with the identification, functionality, features and failure mode of the subject regulator[34]

2012 - Ameren non-IRV gas regulator replacement program implemented[35]

- In response to discovery requests in this litigation, Ameren replaces several non-IRV Model 1823B regulators in the very neighborhood where the explosion occurred
- Four years after Fred Leutkemeier says he became aware that there were non-IRV regulators in service at residential customer meter sets in the State of Missouri, Ameren initiates a program to locate and replace service regulators lacking IRV production

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[30] PSOF 150.
[31] PSOF § IX.C. PSOF 142-249.
[32] PSOF 148.
[33] PSOF 148.
[34] PSOF 148.
[35] PSOF 10, 151-157.

- Ameren estimates the cost of the non-IRV regulator replacement program to be in excess of $2 million
- Ameren estimates that there may be as many as 4500 non-IRV regulators in use in the State of Missouri; they are all at least 28 years old with no maintenance, inspection or repair directly applicable to them over nearly 3 decades pursuant to company policy; yet Ameren has taken no action to notify its customers of same

5. IMPACT OF DEFENDANT'S SPOLIATION OF EVIDENCE

Ameren's spoliation of evidence, its failure to maintain and keep relevant records, and its incredible explanations for this mis- or malfeasance, must be taken into account fully in the Court's disposition of Ameren's request for partial summary judgment. Under the cases cited above, evidence of Ameren's post-explosion conduct is relevant to an assessment of whether there exists a sufficient nexus to the issues germane to that want of care which shows indifference to the safety of others. Ameren's failure to keep material evidence of regulator identity and location installation provides the predicate for Ameren's contention that the cause of the explosion cannot be proved; it argues now that plaintiffs allegedly cannot identify the features, type or failure mode of the regulator. Conveniently for Ameren, key parts of the subject regulator remnant that existed after the fire and explosion, on the day thereof, have disappeared and were never to be seen again.

In an industry where record keeping is a pervasive practice precisely because fires and explosions make identification of relevant evidence years from now so difficult, it is unthinkable that Ameren would not keep records of regulator identity and installation location. Regulators unlike meters have a defined and important safety function in the system intended to prevent dangerous overpressure. But because meters are the company's "cash register"[36] Ameren keeps meticulous records of meter identity, location, type, function and the like. Meters are even treated to a systematic replacement program, ensuring that fresh, maintained and properly

[36] PSOF 53.